

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Maldonado Analyst: Kristina E. North Bill Number: AB 790

Related Bills: See Prior Analysis Telephone: 845-6978 Amended Date: APTBA

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Employer Provided Health Care Credit/California Farmworker Health Care Protection Act of 2001/FTB Report to Legislature

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

X AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 22, 2001.

X FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 22, 2001, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would create an employer tax credit for providing health care or health insurance to farmworker employees.

SUMMARY OF AMENDMENT

The proposed amendments would:

- delay the operative dates of the credit from taxable years beginning on or after January 1, 2001, and before January 1, 2008, to taxable years beginning on or after January 1, 2002, and before January 1, 2009,
- change the definition to allow farmworkers receiving publicly funded health care to qualify an employer, the taxpayer, for the credit,
- eliminate the language allowing the credit to be carried over, and
- make technical changes.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> </u> X PENDING

Legislative Director

Date

Christy Keith for B.P.

12/31/01

The proposed amendments would partially resolve the implementation concerns in the department's analysis of the bill as introduced. The amendments would also create a new policy concern. The unresolved implementation, technical, and policy concerns, as well as the new policy concern and revenue, are provided below. The reminder of the department's analysis of the bill as introduced still applies.

POSITION

Pending.

IMPLEMENTATION CONSIDERATIONS

For the purposes of audit, this department does not have the expertise to determine 1) "necessary and appropriate medical services to treat and prevent the spread of a contagious disease" or 2) what constitutes a "contagious disease." To ensure the author's intentions are achieved and to minimize disputes with taxpayers, it would be helpful if an entity with the necessary expertise could certify this information for the credit and provide the certification to this department.

The terms "health plan" and "preventive care insurance" are included under the definition of "qualified expenses," but are not themselves defined. Additionally, some health plans do not include preventive care as a service and some preventive care insurance companies provide more preventive care than the treatment or prevention of a contagious disease. To ensure the author's intentions are achieved and to minimize disputes with taxpayers, an entity with preventive health care knowledge and ability could certify to the department the amount of expenses claimed by taxpayers that would meet with the author's intent.

Revenue Estimate

This bill is expected to result in revenue losses as shown in the following table:

Revenue Impact of AB 790 Beginning 1/01/2002 Assumed Enactment After 6/30/2002 (In Millions)*			
	2002/2003	2003/2004	2004/2005
Personal Income Tax	-\$3.2	-\$4	-\$4
Bank & Corp. Income Tax	-\$3.2	-\$4	-\$4
Total	-\$6.5	-\$8	-\$8

*After rounding.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

Contact with industry experts indicated that about 10% of farmworkers currently receive some form of publicly funded health care. Inclusion of these farmworkers would result in an increase of approximately \$1.5 million in qualifying employer expenses. At the same time, eliminating the carryover provision of the bill reduces the revenue impact beginning with fiscal year 2003/2004. Except for the initial impact year, these two effects essentially balance each out resulting in no significant change in total revenue losses.

LEGAL IMPACT

This bill would require that a qualified farmworker be a resident of California as a prerequisite to allowing the taxpayer this credit. This residency requirement may be subject to constitutional challenge as discriminatory against nonresident farmworkers who are employed within California.

The credit already requires that farmworkers provide all of their services for the taxpayer within California, which may be sufficient to ensure that the credit is targeted to employers of California workers earning wages and compensation subject to California tax.

POLICY CONCERNS

This new credit would require the deduction for qualified expenses to be reduced in order to eliminate the double benefit of receiving both the credit and the expense deduction. However, this adjustment would create a state and federal difference for the taxable year in which the qualified expenses are deducted, which is contrary to the state's general conformity policy. This one-time adjustment would not establish an ongoing difference between federal and state measures of taxable income.

This bill would allow this credit only for taxpayers that employ "agricultural employees," resulting in different tax treatment for similarly situated taxpayers employing workers in different occupations.

The amendments would remove the language allowing a limited carryover period if the taxpayer cannot use the entire credit amount in the year claimed. This elimination may discourage taxpayers from incurring the necessary expenses to claim the credit, as any unused credit would be permanently lost.

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